

January 25, 2024

Proposed Changes to S.213, An act relating to the regulation of wetlands, river corridor development, and dam safety.

Wetlands Section

Proposed Definition: 'Dam removal' means a river restoration and resilience project that removes all or part of a dam as defined in 10 VSA 1080(6).

§ 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING (starts at pg. 5 Line 3)

(a) On or before July 1, 2025, the Secretary of Natural Resources shall amend the Vermont Wetlands Rules to clarify that the goal of wetlands regulation and management in the State is the net gain of wetlands to be achieved through protection of existing wetlands and restoration of previously developed wetlands. As a condition of a permit for activity in a wetland, the Secretary shall require the net gain of wetlands. **This condition shall not apply to wetland, river, and floodplain restoration projects, including dam removals.**

(b) The Vermont Wetlands Rules shall prioritize the protection of existing intact wetlands **from development**. Where permitted activity within a wetland **greater than 5,000 square feet** will cause adverse effects that cannot be avoided, the Secretary shall mandate that the permit applicant restore, enhance, or create wetlands or buffers to compensate for adverse effects on a wetland. The amount of wetlands to be restored, enhanced, or created shall be calculated, at a minimum, by determining the acreage or square footage of wetlands adversely affected by the permitted activity and multiplying the number of adversely affected acres or square feet by two, to result in ratio of 2:1 restoration to disturbance. Establishment of a buffer zone contiguous to a wetland shall not substitute for the restoration, enhancement, or creation of wetlands. Adverse effects on wetland buffers shall also be restored, enhanced, or created at a ratio of 2:1 restoration to disturbance, as established on a case-by-case, per project basis.

(c) At a minimum, the Wetlands Rules shall be revised to: (pg. 6 Line 1)

(1) Require an applicant for a wetlands permit to restore and enhance any loss of wetlands **greater than 5,000 square feet** caused by the project that is subject to the permit application. **Wetland, river and floodplain restoration projects, including dam removals, shall not require a wetlands permit under this rule.**

(2) Incorporate the net gain rule into existing general permits and into requirements for permits issued after July 1, 2025.

(3) Establish a set of parameters and ratios for the permittee-designed restored wetlands, at not less than a 2:1 ratio, which shall include, at a minimum, the following factors:

(d) When amending the Vermont Wetlands Rules under this section, the Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for wetlands impacts that may be authorized as compensation for an adverse effect on a wetland when the permittee cannot achieve restoration. The Secretary may implement a Vermont ILF compensation program through agreements with third-party entities such as the U.S. Army Corps of Engineers or environmental organizations, provided that any ILF monetary compensation authorized under the rules shall be expended on restoration, reestablishment, enhancement, or conservation projects within the State at the ~~HUC-12~~ HUC 8 level of the adversely affected wetland when practicable.

River Corridors Section

Sec 6 10 V.S.A. §752 DEFINITIONS *(pg. 11 Line 7)*

(4) “Existing settlement” shall have the same meaning as defined under 10 V.S.A. §6001.

Sec 7 § 754. FLOOD HAZARD AREA AND MAPPED RIVER CORRIDOR
~~RULES; USES EXEMPT FROM MUNICIPAL REGULATION~~

(b) Required rulemaking content. The rules shall: *(pg. 12 Line 13)*

(1) set forth the requirements necessary to ensure ~~uses exempt from municipal regulation~~ are development is regulated by the State in order to comply with the regulatory obligations set forth under the National Flood Insurance Program;

(2) be designed to ensure that the State and municipalities meet community eligibility requirements for the National Flood Insurance Program;

(3) establish the requirements and process for a municipality to be delegated the State’s permitting authority for development in a flood hazard area or mapped river corridor that is not exempt from municipal regulation when the municipality has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117 that has been approved by the Secretary and that meets or exceeds the requirements established under State rule; and

(4) set forth a process, ~~in collaboration with the Agency of Commerce and Community Development (ACCD) and the Vermont Regional Planning Commissions (RPCs),~~ for amending the statewide river corridor map to identify areas within ~~designated centers existing settlements, as defined,~~ suitable for ~~infill and redevelopment~~ development that will not cause or contribute to increases in fluvial erosion hazards.

~~(e) (5) Discretionary rulemaking The rules may establish set forth~~ requirements that exceed the requirements of the National Flood Insurance Program ~~for uses exempt from municipal regulation,~~ including requirements for the maintenance of existing native riparian vegetation, provided that any rules adopted under this subsection that exceed the minimum

* * *

(+) (c) Permit requirement. A Beginning on July 1, 2026, a person shall not commence or conduct a use ~~exempt from municipal regulation~~ development in a flood hazard area or mapped river corridor in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 or commence construction of a State-owned and -operated institution or facility located within a flood hazard area or river corridor, without a permit issued under the rules required under subsection (a) of this section by the Secretary or by a State agency delegated permitting authority under subsection (g) of this section. When an application is filed under this section, the Secretary or delegated State agency shall proceed in accordance with chapter 170 of this title.

Dam Safety Section

General Changes

I. Support adding S.218 An act relating to the staffing of the Dam Safety Division

II. Add jurisdictional transfer from PUC to DEC

- Add H.615 ‘An act relating to transferring safety jurisdiction over certain hydroelectric dams.’

Proposed Changes to Specific Language

III. Changes to Alternatives Analysis for Unsafe Dam Funding:

Sec 11. §1106 UNSAFE DAM SAFETY REVOLVING LOAN FUND

(b)(2) Nonemergency funding. For permanent safety or risk reduction projects such as repair, rehabilitation, or removal, including engineering, analyses, and design. (pg. 20, Lines 4 – 8)

(E) To be eligible for nonemergency funding, an alternatives analysis ~~review~~ of dam repair, rehabilitation and removal options that considers floodplain and wetland restoration, water quality, aquatic organism passage, public recreation opportunities and costs must be ~~conducted~~ completed, pursuant to rules adopted by the Department, ~~the Department of Fish and Wildlife, or a third party in collaboration with either the Department or the Department of Fish and Wildlife.~~

Sec 12. § 1110. RULEMAKING (pg. 23 Lines 18)

The Commissioner of Environmental Conservation shall adopt rules to implement the requirements of this chapter for dams under the jurisdiction of the Department. The rules shall include:

(7) requirements and criteria that the alternative analysis, including that it be conducted by an independent third-party and is necessary for eligibility for nonemergency funding from the Unsafe Dam Fund.

IV. Changes to Qualification for Loan Subsidy: (pg. 20 Lines 9 – 10).

(b)(2) Nonemergency funding. For permanent safety or risk reduction projects such as repair, rehabilitation, or removal, including engineering, analyses, and design.

(F) Under this subdivision (b)(2), only engineering, analysis ~~and~~ design ~~studies and~~ construction that result in removal of a dam are eligible for loan subsidy.

Additional Proposal:

AMENDMENT TO BASIN PLANNING

10 V.S.A. § 1253(d) is amended to read:

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) identify opportunities to mitigate impacts of severe precipitation events on communities through implementation of nature-based restoration projects or practices that increase natural flood water attenuation and storage;

###